IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

CRL.A.No. 1524 of 2005()

SC.260/2002 of ADDL.DISTRICT & SESSIONS JUDGE (ADHOC), FAST TRACK COURT -I, PATHANAMTHITTA

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APPELLANT: ACCUSED

RAJAN, S/O.KRISHNAN, CHIRAVARAMBEL
VEEDU, KUNNATHUKARA MURI, PERINGANADU VILLAGE,
ADOOR TALUK.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENT: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P.SRI.M.S.BREEZE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO. 1524 OF 2005

Dated this the 7th day of March, 2007.

JUDGMENT

The appellant faced trial for an offence punishable under Section 8(1) read with Section 8(2) of the Abkari Act on the allegation that he was found in possession of 23 polythene packets each contained 150 ml of arrack without any permit or licence on 8.6.1999 at a place called Peringanadu at Adoor in Karuvatta village. To prove the case against the appellant, prosecution examined Pws 1 to 6 and relied on Exts.P1 to P8. The prosecution also produced MO 1 series. On closing the prosecution evidence, the appellant was questioned under Section 313 of the Code of Criminal Procedure. Denying the prosecution allegation, the appellant had stated that the case was foisted against him and he was not arrested as alleged by the prosecution, but he was arrested from his house on the previous day. However, relying on the evidence adduced by the prosecution, both oral and documentary, the trial court found the appellant guilty under Section 8 of the Abkari Act and he was convicted

thereunder and sentenced to undergo R.I for three years and to pay a fine of Rupees One lakh and in default of payment of the fine, a further period of S.I for two years also ordered. The above judgment of the trial court is assailed in this appeal.

2. The learned counsel appearing for the appellant/accused submits that the trial court went wrong in believing the official witnesses since the prosecution case is not supported by the independent witnesses, Pws 4 and 5. Further, the learned counsel submits that the penalty imposed by the trial court is excessive.

3. The prosecution case has been spoken to by Pws 1 to 3 and PW6, who had detected and investigated the crime and placed charge before the court. According to the prosecution, while CW1, a Preventive Officer of the Excise along with Pws 1 to 3 were on patrol duty on 8.6.1999 and when they reached at the place of incident, they have seen the appellant coming towards them holding a plastic bag in his hand. On questioning the appellant, it was found that the

plastic bag contained 23 packets, each contained 150 ml of arrack. The evidence adduced by Pws 1 to 3 would show that CW1 had questioned the appellant and on preparing Ext.P1 mahazar in the presence of Pws 1 to 5, the contraband article MO1 bag was seized from the appellant and CW1 had taken sample in the presence of the witnesses and on taking the sample, the same was sealed, labeled and the appellant was arrested by preparing Ext.P2 arrest memo. It was further stated by Pws 1 to 3 that the appellant, the contraband article and the sample were produced before the court on the same day. Pws1 to 3 are the Preventive Officer, Excise Guard and the Excise Inspector respectively. Pws 1 to 3 had stated before the court that they accompanied CW1 on the fateful day and they have seen the appellant coming towards them while they were reached at the place of incident and they have seen that the appellant was holding MO1 bag in his hand and on further questioning, it was found that MO1 contained 23 packets each contained 150 ml of arrack. Further these witness have stated that CW1 had prepared Ext.P1 mahazar and seized the contraband article and sample was also taken from the contraband article seized

from the appellant. Further these witness have stated that the appellant was arrested at the spot on preparing Ext.P2 arrest memo by CW1. Further these witnesses have stated that copy of the arrest memo has been served on the wife of the appellant. Though these witnesses were thoroughly cross-examined by the defence counsel, the evidence has not been shattered. PW6 had stated that he continued the investigation of the case and finally laid the charge and as per Ext.P6 report, it was reported that the sample contained 29.65% ethyl alcohol by volume. The trial court, relying on the evidence of the prosecution witnesses, found that the prosecution had succeeded in proving the case against the appellant. Though two witnesses, Pws 4 and 5, were examined to support the prosecution case, they turned hostile to the prosecution, they admit their signatures in Ext.P1 mahazar. In the above circumstances, the trial court rightly relied on the evidence adduced by the prosecution and found the appellant guilty of the offence punishable under Section 8 (1) read with Section 8(2) of the Abkari Act.

4. Hence, on considering the entire evidence and re-

appreciation of the same and on considering the contention of the learned counsel appearing for the appellant, this Court is of the view that the findings of the trial court require no interference.

5. The learned counsel submits that the punishment awarded against the petitioner is excessive. It has come out in evidence that the appellant has already faced trial in S.C.No.259/2002 of the same court and he was convicted for the same offence and sentenced to undergo R.I for three years and a fine of Rupees One lakh. That judgment was also challenged in Crl.A.No.1553/2005 before this Court. This Court heard that appeal and made certain modifications in the sentence imposed on default of the payment of fine.

6. In the above circumstances and considering the above fact also, the petitioner is not deserving any relief with regard to the substantive sentence awarded against him by the trial court in this case. However, considering the fact that the default sentence of two years awarded by the trial court can be reduced to six months. With the above

modification, in all other respects the appeal stands dismissed.

7. The learned counsel lastly submits that as this court had already found that the appellant is guilty of the offence in a previous case, this Court may order the suffering of sentence concurrently with the sentence already passed in S.C.No.259/2002 in Crl.A.No.1553/2005. Considering the facts and circumstances of the case, this Court is of the view that the sentence awarded in this case can be allowed to run concurrently with the sentence awarded in S.C.No.259/2002 in Crl.A.No.1553/2005. The appellant is entitled for the benefit under Section 428 of the Cr.P.C.

Ordered accordingly.

K. THANKAPPAN, JUDGE.

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